

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

NATHAN DINGESS,

Plaintiff

v.

Civil Action No.: 2:04-0551

JO ANNE BARNHART,
Commissioner of
Social Security,

Defendant

MEMORANDUM OPINION AND ORDER

The court having received the Proposed Findings and Recommendation of United States Magistrate Judge Mary E. Stanley, entered on May 4, 2005; and the magistrate judge having recommended that the court grant plaintiff's motion for judgment on the pleadings to the extent that it seeks remand to the Commissioner for further proceedings and otherwise deny it; and the magistrate judge having further recommended that the court deny defendant's motion for judgment on the pleadings, reverse the final decision of the Commissioner, remand the case to the Commissioner and dismiss this matter from the court's docket; and no objection having been filed to the proposed findings and recommendation, it is ORDERED that:

1. The findings made in the Proposed Findings and Recommendation of the magistrate judge be, and the same hereby are, adopted by the court;

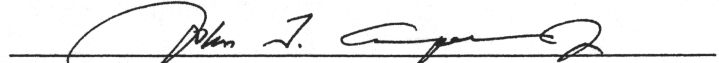
2. The plaintiff's motion for judgment on the pleadings be, and it hereby is, granted only insofar as it requests remand to the Commissioner for further proceedings and plaintiff's motion is otherwise denied;

3. The defendant's motion for judgment on the pleadings be, and it hereby is, denied; and

4. The decision of the Commissioner be, and the same hereby is, reversed and this cause is remanded to the Commissioner for further proceedings pursuant to the fourth sentence of 42 U.S.C.A. § 405(g), which proceedings shall include a consideration of the requisite pain and credibility analysis, and as otherwise more fully set forth in the magistrate judge's proposed findings and recommendation.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and the United States Magistrate Judge.

DATED: May 27, 2005

A handwritten signature in blue ink, appearing to read "John T. Copenhaver, Jr.", is written over a horizontal line.

John T. Copenhaver, Jr.
United States District Judge